

## Message Text

CONFIDENTIAL

PAGE 01 BERLIN 00770 01 OF 04 011255Z  
ACTION EUR-12

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NSC-05 SP-02 SS-15 CIAE-00 INR-07 NSAE-00 CPR-01  
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FM AMEMBASSY BERLIN  
TO SECSTATE WASHDC PRIORITY 6621  
INFO AMEMBASSY BONN  
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USMISSION USBERLIN  
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C O N F I D E N T I A L SECTION 01 OF 04 BERLIN 00770

E.O. 11652: GDS  
TAGS: PFOR, CGEN, GE, US  
SUBJECT: KLOBES-AMBASSADORIAL MEETING ON US-GDR  
CONSULAR CONVENTION

REF: A) STATE 021821, B) BERLIN 0224

SUMMARY: I CONTINUED INFORMAL DISCUSSIONS JANUARY 31  
WITH AMBASSADOR KLOBES OF THE FOREIGN MINISTRY'S  
CONSULAR DEPARTMENT ON THE OUTSTANDING CONSULAR CONVENTION  
ISSUES, STRESSING OUR POSITION ON GERMAN NATIONALITY,  
OUR READINESS TO SIGN A CONVENTION WITHOUT ANY DEFINITION  
OF NATIONALITY OR AN EXCHANGE OF LETTERS ON THE  
SUBJECT, AND GAVE HIM COPIES OF THE REVISED DRAFT  
TEXTS. KLOBES, AS EXPECTED, CONTINUED TO RESIST  
THE IDEA OF INCLUSION OF A REFERENCE TO GERMAN  
NATIONALITY IN AN EXCHANGE OF LETTERS, ASSERTING THIS  
WAS AN EXTRANEIOUS MATTER IN A PURELY BILATERAL AGREEMENT.  
HE DID NOT RESPOND TO SUGGESTIONS THAT WE CONCLUDE  
A CONSULAR CONVENTION WITHOUT A DEFINITION OF NATIONALITY  
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BERLIN 00770 01 OF 04 011255Z

OR AN EXCHANGE OF LETTERS ON THE SUBJECT, AND DID NOT  
OFFER ANY NEW GDR DRAFT LANGUAGE. HE TOOK MY EXPRESSION  
OF INTEREST IN RECEIVING FROM DEPUTY FONMIN MOLDT THE  
GDR'S VIEWS ON OUR LATEST DRAFT TEXTS BEFORE I LEAVE  
FOR THE U.S. IN MID-FEBRUARY, BUT DID NOT MAKE ANY  
SPECIFIC COMMITMENT ABOUT A MEETING. END SUMMARY.

1. I MET FOR ONE HOUR JANUARY 31 WITH AMBASSADOR KLOBES, CHIEF OF THE MFA'S CONSULAR DEPARTMENT, IN THE ABSENCE OF DEPUTY FOREIGN MINISTER MOLDT, WHO IS ON LEAVE UNTIL FEBRUARY 6. KLOBES, WHO HAS PARTICIPATED IN ALL MY MEETINGS WITH MOLDT CONCERNING THE CONSULAR CONVENTION, WAS ACCOMPANIED BY A NOTE-TAKER AND A TRANSLATOR, THE DCM WAS ALSO PRESENT.

2. AFTER AN INITIAL EXCHANGE OF PLEASANTRIES, I MADE A PRESENTATION BASED ON PARAS 4-7 OF REFTEL A. I SAID DEP. FONMIN MOLDT'S COMMENTS DURING OUR JANUARY 10 MEETING HAD BEEN GIVEN VERY CAREFUL CONSIDERATION BY THE DEPARTMENT. IT REMAINED OUR HOPE THAT THE OUTSTANDING ISSUES CAN BE RESOLVED SINCE THE CONCLUSION OF A CONSULAR CONVENTION WOULD HAVE A VERY POSITIVE EFFECT ON OUR BILATERAL RELATIONS.

3. IN CONTINUING THESE INFORMAL DISCUSSIONS I HAVE BEEN INSTRUCTED TO REITERATE THE U.S. POSITION ON GERMAN NATIONALITY. WE BELIEVE THAT A DEFINITION OF NATIONALITY AGREED UPON BY TWO STATES WOULD HAVE NO BINDING EFFECT ON THIRD STATES. THE U.S. MUST RESERVE ITS POSITION ON THE QUESTION OF GERMAN NATIONALITY. THIS POSITION WAS BASED ON PRINCIPLE AND NOT ON TACTICAL CONSIDERATIONS. IN THIS CONNECTION I WISHED TO STRESS THE INHERENT IMPORTANCE TO THE U.S. OF THE OVERRIDING ISSUE OF CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BERLIN 00770 01 OF 04 011255Z

GERMAN NATIONALITY.

4. I WISHED TO EXPLAIN CLEARLY THE REASONS FOR OUR POSITION. FIRST, THE DEFINITION OF GERMAN NATIONALITY IS AN UNRESOLVED WORLD WAR II ISSUE WHICH CANNOT BE ABOLISHED BY EITHER THE FRG OR THE GDR. THE ISSUE INVOLVES GERMANY AS A WHOLE, AND THE U.S., AS ONE OF THE FOUR POWERS WITH RETAINED RIGHTS AND RESPONSIBILITIES IN GERMANY, DOES NOT ACCEPT THAT SUCH ISSUES CAN BE RESOLVED IN A PIECEMEAL FASHION. THEY MUST BE THE SUBJECT OF A PEACE TREATY TO WHICH THE U.S. WOULD BE A PARTY. I TOLD KLOBES I WANTED TO MAKE ANOTHER POINT ON A PURELY PERSONAL BASIS IN THE INTEREST OF PROMOTING BETTER UNDERSTANDING OF OUR POSITION AND SO THAT THE GDR GOVERNMENT WOULD NOT UNDERESTIMATE THE IMPORTANCE OF THE ISSUE TO US: IF WE DID NOT ADHERE TO OUR CONCEPT OF GERMAN NATIONALITY, QUESTIONS WOULD ARISE SOONER OR LATER ABOUT THE NATIONALITY OF BERLINERS. THEN WE WOULD FIND OURSELVES WITH A THREE-GERMAN-STATE NATIONALITY THEORY, WHICH THE U.S. HAS LONG RESISTED. THEREFORE, IF WE DID NOT RESERVE OUR PRESENT POSITION, WE WOULD HAVE A VERY SERIOUS PROBLEM OF PRECEDENT.

5. I WISHED TO MAKE CLEAR THE U.S. DOES NOT QUESTION THE SOVEREIGNTY OF THE GDR. I WAS ASKED TO REASSURE THE GDR GOVERNMENT THAT THE U.S. POSITION ON GERMAN NATIONALITY DOES NOT AFFECT THE FACT THAT WE RECOGNIZE THE GDR AS A SOVEREIGN STATE WITH CITIZENS AND RECOGNIZED BORDERS. WE HAVE ALSO POINTED OUT THAT NO PRACTICAL PROBLEMS WOULD ARISE ON THE QUESTION OF CONSULAR REPRESENTATION OR ACCESS. THE GDR WOULD HAVE ACCESS TO ITS DOCUMENTED CITIZENS. NO GDR CITIZEN WOULD

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PAGE 01 BERLIN 00770 02 OF 04 011307Z

ACTION EUR-12

INFO OCT-01 ISO-00 SCS-06 CA-01 L-03 H-01 HA-05 PM-05

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C O N F I D E N T I A L SECTION 02 OF 04 BERLIN 00770

BE FORCED TO SEE A REPRESENTATIVE OF ANOTHER STATE AGAINST HIS WILL.

6. FOR ALL THESE AND OTHER REASONS, THE U.S. MUST INSIST ON NO DEFINITION OF NATIONALITY IN A CONSULAR CONVENTION ITSELF. IF THE GDR INSISTS ON A SEPARATE STATEMENT DEFINING GDR CITIZENSHIP, WE FEEL WE HAVE THE RIGHT TO PRESERVE OUR POSITION ON GERMAN NATIONALITY. AT THE SAME TIME, WE FULLY UNDERSTAND THAT THIS IS A SENSITIVE QUESTION FOR THE GDR. WE HAVE THOUGHT ABOUT IT CAREFULLY IN AN EFFORT TO FIND A FORMULATION ACCEPTABLE TO BOTH SIDES. I THEN SAID WE HAD MODIFIED THE DRAFT LANGUAGE WE HAD PRESENTED TO THEM ON JANUARY 10 AND GAVE HIM A COPY OF THE LONGER OF THE TWO VERSIONS (PARA 7A REF A).

7. AFTER LISTENING TO A TRANSLATION OF THE DRAFT INTO GERMAN, KLOBES EXPRESSED PLEASURE AT THE CONTINUATION OF THE INFORMAL DISCUSSIONS ON THIS ISSUE. HE EXPRESSED THANKS FOR MY FRANK AND OPEN PRESENTATION. THE GDR WAS CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BERLIN 00770 02 OF 04 011307Z

CONVINCED THAT WE WILL SUCCEED IN OVERCOMING THE CURRENT DIFFICULTIES IN THE CONSULAR CONVENTION. HE WISHED TO REPEAT WHAT DEPUTY FOREIGN MINISTER MOLDT HAD SAID, I.E., THE GDR WAS INTERESTED IN EXPANDING RELATIONS WITH THE UNITED STATES, NOT ONLY IN CONNECTION WITH THE CONSULAR CONVENTION BUT IN OTHER AREAS AS WELL. WERE IT OTHERWISE, IT WOULD BE DIFFICULT TO UNDERSTAND WHY SUCH DISCUSSIONS WERE TAKING PLACE.

8. KLOBES SAID HE WISHED TO EXPRESS SOME THOUGHTS REGARDING THE U.S. POSITION ON THE CONSULAR CONVENTION. CERTAINLY THERE WERE POINTS I HAD MADE ON WHICH THE GDR DOES NOT HOLD DIFFERENT OPINIONS. SPECIFICALLY, MY STATEMENT REGARDING GDR SOVEREIGNTY AND THE REASSURANCES BY THE UNITED STATES GOVERNMENT CONCERNING ITS RESPECT FOR GDR SOVEREIGNTY AND THE RIGHTS THE GDR HAS WITH RESPECT TO ITS CITIZENS AND LAWS. I INTERRUPTED KLOBES AT THIS POINT TO REITERATE EXACTLY WHAT I HAD SAID, I.E., "THE POSITION OF THE UNITED STATES GOVERNMENT ON GERMAN NATIONALITY DOES NOT AFFECT THE FACT THAT WE RECOGNIZE THE GDR AS A SOVEREIGN STATE WITH CITIZENS AND RECOGNIZED BORDERS".

9. KLOBES RESPONDED, SAYING HE DID NOT WISH TO PUT A DIFFERENT SHADE OF MEANING ON MY REMARKS; HE WAS MERELY TALKING FROM MEMORY. HE SAID THERE WERE TWO THINGS HE DID NOT UNDERSTAND. FIRST, WHAT CONNECTION WAS THERE BETWEEN GERMAN NATIONALITY, THE TERM USED IN THE U.S. DRAFT, AND GDR SOVEREIGNTY. HE ALSO DID NOT UNDERSTAND WHY, IN A BILATERAL AGREEMENT, THERE SHOULD BE A REFERENCE THAT THE AGREEMENT DOES NOT HAVE BINDING EFFECT ON THIRD STATES. HE THEN ASKED RHETORICALLY WHY, SUDDENLY, DOES THE PHRASE "GERMAN CONFIDENTIAL

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PAGE 03 BERLIN 00770 02 OF 04 011307Z

NATIONALITY" CROP UP IN OUR DISCUSSION, HOW DOES IT GET THERE?

10. KOBES ASKED IF IT WOULD NOT BE BETTER TO CONFINE OURSELVES TO A MENTION OF THE FACTS THAT DIRECTLY

CONCERN US: GDR NATIONALITY AND THE CIRCLE OF PERSONS  
TO BE REPRESENTED BY CONSULAR OFFICERS. THE GDR WAS  
READY TO MAKE A PROVISION FOR THE MATTER OF NATIONALITY  
IN AN EXCHANGE OF LETTERS.

11. HE OBSERVED THAT THE SECOND U.S. DRAFT LETTER  
MAINTAINS IN AN UNCHANGED WAY THE U.S. POSITION ON  
GERMAN NATIONALITY. THE QUESTION ARISES IN THIS  
CONNECTION: WHY MENTION GERMAN NATIONALITY HERE,  
SINCE IT IS NOT MENTIONED IN THE CONSULAR CONVENTION;  
IT DOES NOT PLAY ANY ROLE. MUCH LESS SO, IF ONE CON-  
SIDERS THAT IN THE CONSULAR CONVENTION, OR IN THE  
EXCHANGE OF LETTERS, THERE IS A PROVISION THAT  
THE CONSULAR CONVENTION HAS NO BINDING EFFECT ON THIRD  
STATES. WOULD IT NOT BE BETTER TO DEFINE OURSELVES  
TO THE QUESTIONS THAT CONCERN JUST THE TWO STATES AND  
NOT A THIRD STATE? KLOBES SAID THAT, ALTHOUGH SOME  
WORDS WERE CHANGED AND MOVED AROUND, HE SAW NO DIFFERENCE  
BETWEEN THE FIRST AND THE SECOND U.S. DRAFTS. HE  
CONCLUDED THAT, FOR THE MOMENT, HE DID NOT UNDERSTAND  
THE INTRODUCTION OF THE QUESTION OF GERMAN NATIONALITY  
IN A MATTER WHICH HAS NOTHING TO DO WITH THE SUBJECT  
OF A CONSULAR CONVENTION.

12. I RESPONDED BY POINTING OUT THAT THE QUESTION  
ARISES BECAUSE THE GDR WANTED A DEFINITION OF NATIONALITY  
IN A CONSULAR CONVENTION. WE HAVE SAID WE DO NOT

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PAGE 01 BERLIN 00770 03 OF 04 011320Z  
ACTION EUR-12

INFO OCT-01 ISO-00 SCS-06 CA-01 L-03 H-01 HA-05 PM-05  
NSC-05 SP-02 SS-15 CIAE-00 INR-07 NSAE-00 CPR-01  
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C O N F I D E N T I A L SECTION 03 OF 04 BERLIN 00770

BELIEVE A DEFINITION OF NATIONALITY SHOULD BE IN A CONSULAR CONVENTION. IT IS NOT IN THE U.S. PRACTICE AND WOULD, IN OUR VIEW, BE INAPPROPRIATE. WE WERE READY TO SIGN A CONSULAR CONVENTION WITHOUT A DEFINITION OF NATIONALITY. THIS WOULD AVOID SETTING A PRECEDENT FOR US AND WOULD AVOID HIGHLIGHTING THE ISSUE OF GERMAN NATIONALITY. I WISHED TO REPEAT THAT THERE WAS NO QUESTION OF CONSULAR ACCESS OR REPRESENTATION. THE GDR WOULD HAVE ACCESS TO THE CIRCLE OF PERSONS ABOUT WHOM IT HAS CONCERNS. THAT, AFTER ALL, IS THE CENTRAL PURPOSE OF THIS AGREEMENT: TO PROVIDE CONSULAR PROTECTION. THERE IS NO QUESTION ABOUT THAT.

13. I WENT ON TO NOTE THAT THE PROBLEM ARISES WHEN THE GDR INSISTS ON A DEFINITION OF GDR NATIONALITY. THAT RAISES PROBLEMS FOR US. I WISHED TO REPEAT THAT THE DEFINITION OF GERMAN NATIONALITY IS AN UNRESOLVED WORLD WAR II ISSUE, AND IT CAN NOT BE ABOLISHED BY EITHER THE FRG OR THE GDR. U.S. INTERESTS ARE INVOLVED, SINCE WE HAVE RETAINED RIGHTS AND RESPONSIBILITIES FOR CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BERLIN 00770 03 OF 04 011320Z

GERMANY AS A WHOLE AS A RESULT OF WORLD WAR II. THEREFORE, THE MATTER CANNOT BE SOLVED IN A PIECEMEAL MANNER BUT MUST BE SOLVED IN A PEACE TREATY IN WHICH WE WOULD BE A PARTY. THIS IS WHY WE MUST MAINTAIN OUR POSITION ON GERMAN NATIONALITY. I NOTED ONCE AGAIN THAT WE WERE PREPARED TO SIGN A CONSULAR CONVENTION WITHOUT A DEFINITION OF NATIONALITY AND WHICH WOULD TAKE CARE OF THE QUESTION OF CONSULAR PROTECTION, WHICH IS WHAT A CONSULAR CONVENTION IS ALL ABOUT.

14. KLOBES SAID THE SITUATION LOOKED DIFFERENTLY TO HIM. WHEN HE LOOKED AT THE MATTER, HE REFUSED TO MIX UP TWO THINGS WHICH HAVE NOTHING TO DO WITH EACH OTHER. THE FACT IS, THAT TWO SOVEREIGN STATES INTEND TO CONCLUDE A CONSULAR CONVENTION. THIS INCLUDES THE FACT THAT BOTH STATES ARE AWARE THAT EACH STATE HAS NATIONALITY. WE THEN COME TO THE INTERESTING CONCLUSION THAT THE U.S. DOES NOT DOUBT THAT THE GDR HAS SOVEREIGNTY AND CITIZENS. BUT WE ARE NO LONGER IN THE POSITION TO SAY ON WHAT U.S. NATIONALITY IS BASED. THE U.S. RESERVES FOR ITSELF THE RIGHT TO DETERMINE WHO ACQUIRES AND LOSES U.S. NATIONALITY. THE GDR AGREES THAT THE U.S. HAS THIS RIGHT. BUT AT THE SAME TIME THE GDR DOES NOT DEMAND ANY MORE FOR ITSELF, I.E., IT SHOULD BE ENTITLED TO DETERMINE WHO ARE OR ARE NOT ITS CITIZENS. KLOBES WENT ON TO SAY THAT, AS A MATTER OF COURSE, ANY SOVEREIGN STATE, ON THE BASIS OF ITS

LAWS, DETERMINES WHO ACQUIRES AND LOSES ITS CITIZENSHIP. SINCE THIS IS THE KEY QUESTION, WHY SHOULD WE INTRODUCE EXTRANEIOUS MATTERS OF NO DIRECT CONCERN TO THE GDR BUT WHICH AMOUNT TO THE U.S. GOVERNMENT POSITION ON GERMAN NATIONALITY.

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PAGE 03 BERLIN 00770 03 OF 04 011320Z

15. I NOTED THAT WE HAD IN FACT TRIED TO TAKE THE GDR POSITION INTO ACCOUNT, POINTING TO THE SENTENCE IN OUR DRAFT WHICH READS "MOREOVER, THE UNITED STATES GOVERNMENT ADHERES TO INTERNATIONAL LAW PRACTICE THAT ONE STATE MAY NOT CONTROL THE RIGHT OF A PERSON TO ATTAIN OR SURRENDER THE NATIONALITY OF ANOTHER COUNTRY". FURTHERMORE, THE PRECEDING SENTENCE OF THE DRAFT SAYS THE SAME THING. IN OUR VIEW, IT APPLIES TO THE GDR AND THERE IS NO QUESTION ABOUT THAT. THEREFORE, IN OUR VIEW WE HAD MET THE GDR CONCERN ON THIS POINT. THE PROBLEM ARISES WHEN THE GDR FEELS COMPELLED TO DEFINE ITS CONCEPT OF GDR CITIZENSHIP. THEN WE MUST REITERATE OUR POSITION ON GERMAN NATIONALITY. THE THOUGHT BEHIND AN EXCHANGE OF STATEMENTS WAS TO PERMIT EACH SIDE TO EXPRESS ITS POSITION ON NATIONALITY. WHEN THE GDR INSISTS ON DEFINING GDR CITIZENSHIP, IT CAUSES US PROBLEMS. I SAID, SPEAKING PERSONALLY, I THOUGHT IT WOULD BE BETTER TO SIGN A CONSULAR CONVENTION WITHOUT A DEFINITION OF NATIONALITY. THEN THERE WOULD BE NO PROBLEM REGARDING PRACTICAL MATTERS OF CONSULAR PROTECTION AND, AT THIS POINT, GAVE HIM THE SECOND VERSION OF OUR DRAFT STATEMENT (PARA 7B REF A) FOR HIS CONSIDERATION.

16. KLOBES SAID HE WISHED TO RECALL WHAT MOLDT HAD SAID, I.E., WHY THE MATTER OF GERMAN NATIONALITY WAS SO DIFFICULT FOR THE GDR AND WHY IT CANNOT BE DEALT WITH IN THE MANNER WHICH WE WERE PROPOSING. KLOBES SAID THAT THEY DID NOT HAVE IN MIND A PIECEMEAL SOLUTION TO THE PROBLEM AND REALIZED WITHOUT A DOUBT THAT IT COULD NOT BE SETTLED IN THE FRAMEWORK OF A CONSULAR CONVENTION.

CONFIDENTIAL

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PAGE 01 BERLIN 00770 04 OF 04 011329Z  
ACTION EUR-12

INFO OCT-01 ISO-00 SCS-06 CA-01 L-03 H-01 HA-05 PM-05  
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C O N F I D E N T I A L SECTION 04 OF 04 BERLIN 00770

17. HE ASKED WHY WE COULD NOT AGREE ON A FORMULATION THAT CONSULAR OFFICERS HAVE THE RIGHT TO REPRESENT THE INTERESTS OF A CITIZEN OF A STATE WHO IS A CITIZEN OF THAT STATE UNDER ITS LAWS. KLOBES WENT ON TO STATE THAT, IF WE CAN AGREE WE ARE CONCLUDING A BILATERAL AGREEMENT WHICH WILL REGULATE ONLY QUESTIONS OF BILATERAL INTERESTS AND NOT MATTERS AFFECTING A THIRD STATE, WHY SHOULD WE RAISE MATTERS THAT AFFECT THIRD STATES?

18. I SAID IN RESPONSE I WAS PLEASED TO HEAR THAT THE GDR DID NOT WISH TO SOLVE POST-WORLD WAR II QUESTIONS IN A PIECEMEAL FASHION. WE HAVE RETAINED RIGHTS AND RESPONSIBILITIES FOR GERMANY AS A WHOLE WHICH ARE NOT THE INTERESTS OF THIRD STATES. I NOTED THAT DEPUTY FOREIGN MINISTER MOLDT HAD REFERRED TO ARTICLE 116 OF THE FRG CONSTITUTION. IN THIS CONNECTION, I WISHED TO REASSURE KLOBES THAT WE HAD TOLD THE FRG EXACTLY WHAT I WAS TELLING HIM ABOUT OUR POSITION ON CONSULAR ACCESS AND REPRESENTATION. THE FRG, AS FAR AS WE WERE  
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BERLIN 00770 04 OF 04 011329Z

CONCERNED, WOULD HAVE ACCESS TO ITS CITIZENS JUST AS THE GDR WOULD HAVE ACCESS TO ITS CITIZENS.

19. KLOBES SAID, IF THAT WERE THE CASE AND SPEAKING BLUNTLY, HE SAW MUCH LESS REASON WHY THE QUESTION OF GERMAN NATIONALITY SHOULD BE RAISED IN THE EXCHANGE OF LETTERS. I NOTED THAT WHAT WE WERE LOOKING FOR WAS A SOLUTION TO A PROBLEM. WHAT WE HAD PRESENTED WAS AN ALTERNATIVE WAY TO SOLVE THAT PROBLEM. I EXPRESSED THE HOPE THAT DEPUTY FOREIGN MINISTER MOLDT WOULD BE



APPRISED OF MY PRESENTATION, AND THAT THE GDR WOULD CONTINUE TO SHOW FLEXIBILITY AND UNDERSTANDING SO THAT WE COULD ARRIVE AT A CONSTRUCTIVE SOLUTION. I TOLD KLOBES I WOULD BE GOING BACK TO THE UNITED STATES FOR CONSULTATIONS AND OTHER MATTERS ON FEBRUARY 13 AND WOULD HOPE TO HAVE A DISCUSSION WITH DEPUTY FOREIGN MINISTER MOLDT BEFORE THEN. KLOBES SAID THAT HE WOULD INFORM MOLDT OF OUR DISCUSSION AND PROVIDE HIM WITH THE DRAFT STATEMENTS I PRESENTED TODAY. KLOBES CLOSED BY ASKING ME TO INFORM PEOPLE IN WASHINGTON HOW THE GDR SEES THE PROBLEM CONCERNING THE U.S. DRAFT STATEMENTS AND ITS CONCERNS ABOUT GERMAN NATIONALITY, WHICH I ASSURED HIM I WOULD DO.

20. COMMENT: MY MAIN PURPOSE IN MEETING WITH KLOBES JAN. 31 WAS TO MAKE OUR PRESENTATION ON GERMAN NATIONALITY AND TO HAND OVER THE REVISED DRAFTS OF AN EXCHANGE OF LETTERS IN THE EXPECTATION THAT MOLDT WILL GIVE ME A MORE DEFINITIVE ANSWER BEFORE I DEPART FOR THE U.S. IN MID-FEBRUARY. AS I ANTICIPATED, THERE WAS NO EVIDENT CHANGE OR GIVE IN KLOBES' POSITION, AND I WOULD NOT HAVE EXPECTED HIM TO SIGNAL ANY POSSIBLE FLEXIBILITY IN THE GDR POSITION. I ALSO TEND TO THINK CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BERLIN 00770 04 OF 04 011329Z

THAT MOLDT WILL BE JUST AS FIRM, IF I SEE HIM BEFORE DEPARTING MID-FEBRUARY. THAT WOULD BE THE OCCASION TO RAISE PERSONALLY AND INFORMALLY THE IDEA OF AN ORAL EXCHANGE OF STATEMENTS, AND A MEETING MAY PROVIDE INDICATIONS WHETHER THE GDR WILL CONTINUE TO BE UNYIELDING ON THE QUESTION OF GERMAN NATIONALITY. BOLEN

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